

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SHERYL GREENE and DEPARTMENT OF THE NAVY,
NAVAL HOSPITAL, San Diego, CA

*Docket No. 98-110; Submitted on the Record;
Issued August 4, 1999*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant's disability for work before November 2, 1995 or after January 16, 1996, is causally related to her accepted employment injury.

In a decision dated July 15, 1997, the Office of Workers' Compensation Programs found that although many of appellant's allegations involved the administration of personnel matters without evidence of error or abuse, the evidence did substantiate three compensable factors of employment: Appellant's supervisor admitted that he erred in marking appellant absent without leave; a witness substantiated that Ensign White yelled at appellant in the meeting of August 31, 1994; and evidence supported that appellant's job duties increased after she came under the supervision of Ensign White. The Office found that the medical evidence was sufficient to establish a temporary episode of depression related in part to compensable factors of employment. The Office found that disability began on November 2, 1995 when appellant first sought psychiatric care, and ceased on January 16, 1996 when appellant's physician found her capable of working and when appellant voluntarily resigned from employment because of the possibility of continuing harassment.

On appeal appellant stated that she disagreed with the limited period of disability the Office approved. She pointed to the accepted factors of employment, all three of which occurred prior to November 2, 1995 and argued that they should be reflected in the period of disability. Appellant also argued that the period of disability should be extended beyond the date she resigned. She explained that she felt she had no choice but to resign because she could no longer tolerate an abusive situation and because she knew the employing establishment would retaliate against her if she pursued her claim.

The Board finds that the medical evidence of record fails to establish disability for work before November 2, 1995 or after January 16, 1996 is causally related to appellant's accepted employment injury.

A claimant seeking benefits under Federal Employees' Compensation Act has the burden of proof to establish the essential elements of her claim by the weight of the evidence,¹ including that she sustained an injury in the performance of duty and that any specific condition or disability for work, for which she claims compensation is causally related to that employment injury.²

The Office accepted that appellant sustained an injury in the performance of duty and found a temporary period of disability from November 2, 1995 to January 16, 1996. Appellant argues that the accepted period of disability should begin earlier. It is appellant's burden of proof to establish that any earlier period of wage loss is causally related to her accepted employment injury. As part of his burden, she must submit rationalized medical opinion evidence based on a complete factual and medical background establishing disability for the periods claimed.³

In his report of January 16, 1996, Dr. Bao N. Chang, appellant's attending psychiatrist, noted that appellant was referred by her primary care physician for acute anxiety and depression due to stressors at work. He noted that symptoms increased in severity in October 1995 and that he first saw appellant on November 2, 1995. Dr. Chang diagnosed major depression, first episode, moderate and he noted that appellant had responded well to medication to stabilize her condition. He described appellant's prognosis as good: "Her symptoms have improved gradually over the past 3 months. She is likely able to return to work on January 16, 1996." Dr. Chang noted that the problems at work began over a year prior in July 1994 but that appellant had remained resilient and had coped adequately until the stressors became overwhelming in October 1995. He concluded that appellant should be able to return to work on January 16, 1996, as noted, but that she would do best in a supportive environment with clear and consistent information and expectations from her supervisors.

Dr. Chang's report supports the Office's finding of disability beginning November 2, 1995. The reports of Dr. Chang do not establish that appellant was disabled for work prior to that date as a result of her major depression. Rather, Dr. Chang noted "worked and was able to cope with stressors until October 1995." The medical evidence of record does not support an earlier period of injury-related wage loss, much less a well-reasoned medical opinion explaining how appellant's major depression caused an earlier period of disability for work. While symptoms of appellant's major depression may have begun prior to November 2, 1995, there is no probative medical evidence that these symptoms caused disability for work prior to that date.

Dr. Chang's report also supports the Office's finding that disability for work ceased by January 16, 1996. Once the Office accepts a claim it has the burden of justifying modification or termination of compensation. After it has determined that an employee has disability causally related to her employment, the Office may not terminate compensation without establishing that

¹ *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

² *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

³ *Tracey Smith-Cashen*, 38 ECAB 568, 572-73 (1987).

the disability has ceased or is no longer related to the employment injury.⁴ The fact that the Office accepted an employee's claim for a specified period of disability does not shift the burden of proof to the employee. The burden is on the Office with respect to the period subsequent to the date of termination or modification.⁵

Dr. Chang reported that appellant had responded well to medication to stabilize her depression. He described her prognosis as good, with symptoms improving gradually over the past three months and he concluded that appellant was able to return to work on January 16, 1996. The Board finds Dr. Chang's report constitutes the weight of the medical evidence and is sufficient to establish that disability for work causally related to the accepted condition continued until January 16, 1996 and no later. The Office has met its burden of proof on this issue. Appellant argues that the accepted disability for work should extend beyond January 16, 1996, but she bears the burden of proof to establish such disability.⁶ The record contains no medical evidence to support her claim of disability for work after January 16, 1996. As the Office correctly noted, fear of future injury is not a compensable factor of employment.⁷ Although appellant believed that the employing establishment would retaliate against her for pursuing her claim, such a belief constitutes no basis for the payment of compensation for disability.

The July 15, 1997 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
August 4, 1999

David S. Gerson
Member

Michael E. Groom
Alternate Member

⁴ *Edwin Lester*, 34 ECAB 1807 (1983).

⁵ *See Raymond M. Shulden*, 31 ECAB 297 (1979); *Anna M. Blaine (Gilbert H. Blaine)*, 26 ECAB 351 (1975).

⁶ *Maurice E. King*, 6 ECAB 35 (1953); *Wentworth M. Murray*, 7 ECAB 570 (1955) (after a termination of compensation payments, warranted on the basis of the medical evidence, the burden shifts to the claimant to show by the weight of the reliable, probative and substantial evidence that, for the period for which he claims compensation, he had a disability causally related to the employment resulting in a loss of wage-earning capacity).

⁷ *Mary A. Geary*, 43 ECAB 300 (1991).

A. Peter Kanjorski
Alternate Member